IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 743 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE A.L.DAVE

HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JUVANSING RATANSINH & 2 - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
MR. DEEPAK M SHAH for Appellants No.1 to 3.
MR.H.M.PRACHCHAK, ADDL.PUBLIC PROSECUTOR for Opponent-State

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CORAM : HONOURABLE MR.JUSTICE A.L.DAVE
and
HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

Date : 20/04/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE A.L.DAVE)

The appellants have been convicted for the offences punishable under Section 302 read with Section 114 of the Indian Penal Code and are sentenced to undergo life

imprisonment and to pay a fine of Rs.500/- and in default thereof; to undergo rigorous imprisonment for six months. Accused No.3, appellant No.1-Juvansing Ratansing Bhil, came to be convicted for the offence punishable under Section 324 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for six months and to pay a fine of Rs.100/- and in default thereof; to undergo rigorous imprisonment for one month, by judgment and order dated 31/7/1997 passed in Session Case No.14 of 1996 by the learned Additional Sessions Judge, Vadodara.

2. The incident occurred on 27/7/1997 at about 19:30 hours in the outskirts of village Rojva. As per the prosecution case, brother of accused No.3-Juvansing Ratanbhai Bhil asked accused No.1-Motlabhai Juvanbhai Bhil to remove his hut. As a result the accused persons became angry and assaulted deceased-Bhangda Ratan Bhil with arrows. Deceased sustained injuries with arrows on vital parts of the body and succumbed thereto. F.I.R. was lodged in this regard with Chhota Udaipur Police Station. The Police investigated into the matter and having found sufficient material against the appellants, filed charge-sheet in the Court of learned Magistrate. As the offences with which the accused persons were charged were triable exclusively by a Court of Sessions,

learned Magistrate committed the case to the Court of Sessions at Vadodara and Sessions Case No.14 of 1996 came to be registered. The charge was framed against the accused persons at Exh.7. Accused persons (appellants) pleaded not guilty to the charge and came to be tried.

2.1. On basis of the evidence led by the prosecution, the Sessions Court came to a conclusion that the prosecution was successful in establishing the charges for offences punishable under Section 302 read with Section 114 of the Indian Penal Code against the three accused persons and recorded conviction therefor. The Sessions Court also came to a conclusion that offence punishable under Section 324 was also established by the prosecution against accused No.3-Juvansinh Ratanbhai Bhil and recorded his conviction for the same. The Sessions Court found that the prosecution could not establish charge for offence punishable under Section 135 of the Bombay Police Act against any of the accused persons and recorded their acquittal for that offence. The Sessions Court after hearing the accused persons on question of quantum of punishment passed the order of sentence as stated above.

3. Learned Advocate, Mr.Shah for the appellants and

learned A.P.P., Mr.Prachchak, for respondent – State are heard. They have taken us through the record and proceedings.

4. Learned Advocate, Mr.Shah, submitted that the trial Court has committed an error in appreciating the evidence. He submitted that all the three persons could not have been convicted for offences punishable under Section 302 read with Section 114 of the Indian Penal Code. He submitted that there are contradictions in the evidence led by the prosecution and therefore, the prosecution case ought not to have been accepted by the Sessions Court and the appellants could not have been convicted for the offence. He, therefore, submitted that the appeal may be allowed.

5. Learned A.P.P. has opposed this appeal. According to him, the evidence of the eye-witnesses is sufficient to record conviction. There is no reason for not accepting the evidence of eye-witnesses. It is established that the injuries which were caused by the appellants to the deceased were sufficient in ordinary course of nature to cause death. The weapon used are arrows and incident cannot be said to have erupted all of a sudden. The appellants were the aggressors, as can be

seen from the evidence. The inquest panchnama, postmortem notes, deposition of the doctor and deposition of the witnesses, clearly indicate involvement of the appellants in the incident. The F.S.L. Report indicates that the arrows were stained with human blood of the group of the deceased. One of the arrow was broken in the body which is noticed while drawing inquest panchnama. Evidence indicates that all the three appellants have darted arrows at the deceased. It is, therefore, clear that Section 114 has correctly been applied for convicting the appellants read with Section 302 of the Indian Penal Code.

5.1. Mr.Prachchak, submitted that the size of the arrowhead is found to be different, which would indicate that they were used by different persons. If they were of the same person, the size would have been the same. The arrows recovered by the Police during the course of investigation are found to have been stained with blood of the group of the deceased. He therefore, submitted that the appeal may be dismissed.

6. We have considered rival side contentions. We find that the prosecution has examined following witnesses.

i)Prosecution Witness No.1, Dr.Vithalbhai P. Shah at Exh.12.

ii)Prosecution Witness No.2, Ramsing Bhangdabhai at Exh.15.

iii)Prosecution Witness No.3, Hingaliben Bhangdabhai Bhil at Exh.16.

iv)Prosecution Witness No.4, Thansingbhai Ratansing Bhil at Exh.17.

v)Prosecution Witness No.5, Vechatbhai Jamaliyabhai at Exh.18.

vi)Prosecution Witness No.6, Kesatiya Jamaliyabhai at Exh.19.

vii)Prosecution Witness No.7, Mansinhbhai Bhangdabhai Bhil at Exh.20.

viii)Prosecution Witness No.8, Ramjiya Hekidiyabhai Bhil at Exh.21.

ix)Prosecution Witness No.9, Najrubhai Himirbhai at Exh.22.

x)Prosecution Witness No.10, Aabatiya Ratanbhai Bhil at Exh.23.

xi)Prosecution Witness No.11, Radhubhai Satariyabhai Bhil at Exh.29.

xii)Prosecution Witness No.12, Mohmedhussain Ahmedbhai Malek at Exh.30.

7. We also find that the prosecution has relied upon on following documentary evidence to prove the case.

i)Muddamal List at Exh.1.

ii)Charge frame at Exh.7.

iii)Injury Certificate at Exh.13.

iv)Postmortem Notes at Exh.14.

v)Inquest Panchnama at Exh.24.

vi)Panchnama at Exh.25.

vii)Other copy of Yadi written by P.I. Rangpur Police Station dated 31/7/1995 at Exh.26.

viii)Map of place of offence at Exh.27.

ix)Complaint dated 28/7/1995 at Exh.32.

x)Panchnama of place of offence at Exh.32.

xi)Panchnama of body of accused at Exh.33.

xii)Other copy of Yadi written by P.I. Rangpur Police Station at Exh.35.

xiii)F.S.L. Report at Exh.37.

8. Prosecution Witness No.1, Dr.Vithalbhai Purshottambhai Shah is examined at Exh.12. He describes the six injuries found by him on person of the deceased and states that the injuries were ante-mortem and were sufficient in ordinary course of nature to cause death. He states that the injuries were possible to be caused with the muddamal arrows. We find that the injuries were on vital part of the body viz. chest. Injury No.2 was deep to the thoarasiz cavity. There were three other injuries on the chest. There was one injury on left elbow and one injury on throat. During the cross-examination, doctor denies the suggestion that the injuries were not sufficient in ordinary course of nature to cause death. He states that he had not noticed any arrowhead in the body.

9. Prosecution Witness No.2, Ramsing Bhangdabhai, is examined at Exh.15. He is an eye-witness to the incident. He is the son of the deceased. He, in terms, implicates all the three appellants of having darted arrows at the deceased resulting into the death of the deceased. During cross-examination, he admits that accused No.2-Karamsing Juvansingh Bhil had made some advances towards his wife, Gauri; but he denies the suggestion that as per their custom, he was given Rs.2,000/- and a goat by accused No.2. He admits the suggestion that deceased had some dispute with villagers of Dungergam situate in Madhya Pradesh. He denies the suggestion that he came to know about death of his father at a later point of time. He accepts the suggestion that he had told Police that Karamsing has injured his father. He denies the suggestion that other accused persons had not darted arrow at his father. He states that each of the three accused persons had darted 5 (five) arrows on the deceased. He states that he had lodged the F.I.R. and states that he has not stated in his F.I.R. that all the arrows were darted by accused No.3-Juvansing Ratanbhai Bhil.

10. Prosecution Witness No.3-Hingliben Bhangdabhai Bhil is examined at Exh.16. She is the widow of the

deceased and an eye-witness to the incident. She says that accused No.1-Motlabhai Juvansing Bhil had darted arrow at her husband; at that time Juvansing and Karamsing were present, but they did nothing. She says that nobody had rescued her husband. She also says that place of incident is located near to the house. She admits later on in the cross-examination that when they came home they learnt that her husband had expired. She also admits that she does not know as to who murdered her husband-Bhangda.

11. Prosecution Witness No.4, Thansingbhai Ratansing Bhil is examined at Exh.17. He says that at the time of incident, he was at home. When he heard shouts, he moved out of the house and saw that his brother was lying in a dead condition. He says that Juvansing and Motla had murdered him with arrows. He says that at that time Hingliben, Ramsingbhai, Rameshbahi, etc. were present. He says that the accused persons were drunk. He admits that when he came to the spot, Bhangda was lying there dead. He says that the persons standing over there informed him that Bhangda has died because of injuries caused with arrows. Witness says that he knows nothing else.

12. Prosecution Witness No.5, Vechatbhai Jamaliyabhai, Prosecution Witness No.6, Kesatiya Jamaliyabhai, Prosecution Witness No.8, Ramjiya Hekidiyabhai Bhil, Prosecution Witness No.9, Najrubhai Himirbhai, Prosecution Witness No.10, Abatiya Ratanbhai Bhil, Prosecution Witness No.11, Raghubhai Sattariyabhai Bhil have not supported the prosecution case and are treated as hostile witness.

13. From the above stated oral evidence, it is clear that though Hingliben is cited as eye-witness, she admits during cross-examination that she reached to the spot after the incident was over. Similar is the situation so far as witness-Thansing is concerned. These depositions therefore do not help the prosecution in a manner. However, deposition of Ramsing Bhangdabhai is very relevant. He in terms implicates all the three appellants and has withstood the acid test of cross-examination. His deposition has remained unshaken and there is no reason to disbelieve him simply because he is an interested witness. When the incident has occurred in the house or near the house of the deceased, presence of the complainant is obvious and natural.

13.1. According to us, the version given by this

witness gets full support from the inquest panchnama, panchnama of place of offence and F.S.L. Report. It appears from the Panchnama that one of the arrows was broken and the arrowhead was embedded into the body. However, there is no material to know as to why the doctor did not find the arrowhead from the body of the deceased while performing postmortem. The panchnama of the place of offence also indicates presence of arrows full of blood. The panchnama of place of offence indicates that a broken stick of the arrow was found from the place of the incident and therefore, the witness gets corroboration from these pieces of evidence.

13.2. The size of the arrowhead is found to be different, meaning thereby that the arrows were darted by different persons. Ordinarily, if they are darted by same person, they can reasonably expected to be of same size / dimension. Therefore, we find substance in deposition of Prosecution Witness No.2, Ramsing Bhangdabhai, that all three accused persons darted arrows aimed at the deceased.

14. Besides the say of Ramsing Bhangdabhai there is contemporaneous independent material in form of F.S.L. Report which says that the arrowhead contains blood

stains of the group of the deceased.

15. The panchnama of the place of offence indicates that an arrow which had probably missed its target had hit into the wall of the hut and got embedded into it. This indicates that the arrows were darted indiscriminately by the accused persons.

16. The lack of material as to how the arrowhead which was noticed in the inquest panchnama embedded into the body of the deceased was not noticed by the doctor while performing the postmortem, cannot be considered as a major defect in the prosecution case. It is revealed from the inquest panchnama that arrowhead was partly embedded. It may have fallen down from the body while shifting the deceased to the hospital. That arrowhead has been sent to F.S.L. for chemical analysis and is found to contain blood of the group of the deceased. In any event, this factor cannot and does not abrogate the evidence of eye-witnesses, who are otherwise found to be truthful and reliable. Their presence is natural at the place of incident if the time of incident is considered. We found that contradictions indicated are minor and insignificant which are to be ignored while appreciating

their evidence as a whole.

17. The above evidence; considered collectively, is sufficient to conclude that the prosecution has successfully established the case against the appellants. We have gone through the judgment and order of the trial court and are of the opinion that the judgment and order impugned in this appeal does not call for any interference in exercise of appellate powers. No circumstances are indicated to interfere with the quantum of punishment either. We, therefore, confirm the judgment and order impugned herein. Appeal stands dismissed.

(A.L.DAVE, J.)

(S.R.BRAHMBHATT, J.)

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